IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTH DAY OF OCTOBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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W.P.NO.19464 OF 2001 AND 8857 OF 2002

WRIT PETITION NO : 19464 of 2001

Between:

M\S INDIAN IMMUNOLOGICAL LTD

..... PETITIONER

AND

The Industrial Tribunal I and others

.....RESPONDENT

W.P.NO. 8857 OF 2002

Between:

A.Sivaramaiah .. Petitioner

And

The Industrial Tribunal I and others .. Respondents

ORDER:

W.P.No.19464 of 2001 is filed by M/s Indian Immunologicals Limited, (a Unit of National Dairy Development Board) Hyderabad and W.P.No.8857 of 2002 is filed by the workman challenging the very same award of the Industrial Tribunal in I.D.No.63 of 1997 dated 20.03.2001. Hence both the writ petitions were heard together and are now being disposed of by a common order. Parties shall hereinafter be referred to as they are arrayed in W.P.No.19646 of 2001.

2. Facts, to the extent necessary for these writ petitions, are that the petitioner was earlier a unit of the National Dairy Development Board. The second respondent was appointed as a Junior Assistant, vide proceedings No.1333, dated 28.06.1982, by the third respondent (NDDB) for the foot and mouth disease plant set up at Hyderabad. Subsequently, vide proceedings dated 30.09.1982, the services of the second respondent was transferred to the proposed FMD vaccine plant i.e. Indian Immunologicals. The second

respondent was issued five charge sheets in all, two charge sheets on 11.05.1990, two on 30.05.1990 and another on 17/18.12.1990. Pursuant to a departmental enquiry held against him, the second respondent was imposed the punishment of dismissal from service by order dated 31.05.1991. The second respondent raised an individual dispute and pursuant thereto the Government, vide proceedings dated 29.09.1997, referred the following dispute for adjudication to the Industrial Tribunal I at Hyderabad for adjudication:-

> "Whether the action of the management of M/s N.D.D.B. Hyderabad in dismissal of Sri A.Sivaramaiah from service is justified? If not to what relief the workman is entitled?"

3. The dispute was numbered as I.D.No.63 of 1997. The Industrial Tribunal-I, Hyderabad, (hereinafter referred to as the Tribunal), by order dated 16.09.1999, held that the domestic enquiry conducted against the workman was vitiated. Subsequently, the Tribunal, by its Award dated 23.01.2001, set aside the order of dismissal dated 31.05.1991 and directed that the workman be reinstated into service with continuity of service and all other benefits. The Tribunal further held that the second respondent was also entitled for 25% of the back-wages from the date he was kept out of employment.

4. While the petitioner has challenged the award of the tribunal insofar as it had directed reinstatement with continuity of service, other benefits and 25% of back wages, the second respondent would challenge the award insofar as he was denied the remaining 75% back wages. The impugned award was

suspended, by order dated 19.05.2001, subject to the condition that the second respondent was paid wages under Section 17 B of the Industrial Dispute Act.

5. Sri P.Nageswara sree, learned counsel for the petitioner would submit that the dispute in I.D.No.63 of 1997 is beyond the scope of the reference. Learned counsel would submit that it is clear from the reference that the subject matter of adjudication was whether the action of the management of M/s National Dairy Development Board, Hyderabad in dismissing the second respondent from service was justified and if not what relief the workman was entitled to. Learned counsel would submit that since there is no dispute as against M/s Indian Immunilogicals Limited,

(petitioner herein) the Tribunal had exceeded its jurisdiction and had adjudicated a dispute beyond the scope of the reference in directing the petitioner herein to reinstate the second respondent into service with continuity of service, other benefits and 25% back wages. Learned Counsel would submit that since M/s Indian Immunilogicals Limited is not even a party to the dispute in I.D.No.63 of 1997, no relief could have been granted by the Tribunal against them.

6. While conceding that the order of the Tribunal, in holding that the domestic enquiry was vitiated by its order dated 16.09.1999, has been affirmed by this Court in W.P.No.27138of 1999 dated 22.12.2000. Sri P. Nageswara Sree, learned counsel for the petitioner, would submit that the very basis, for the tribunal holding that the domestic enquiry stood vitiated, was that the Conduct, Discipline and Appeal Rule Regulations, 1988 of NDDB required an enquiry to

be conducted by a public servant whereas the domestic enquiry was conducted by a third party, who was not a public servant. Learned counsel would submit that since this contention had found acceptance with the Industrial Tribunal, on the very same reasoning, since the CDA rules applied only to officers and workmen, covered under the Industrial Disputes Act, were specifically excluded therefrom, the Tribunal ought to have held that the second respondent was not a workman and as a result, no award could have been passed against the petitioner herein. Learned counsel would refer to **Workmen of M/s Firestone Tyre& Rubber C. of India (Pvt.) and The Management and others** , **The District Manager A.P.S.R.T.C., Kukatpalli Bus Depot, Hyderabad V. The Labour Court Hyderabad and another , Karnataka Electricity Board, Bangalore V. Workmen of M/s Amalgamated Electric Co.Ltd. Belgaum and others** and would submit that in view of the proviso to Section 11 A of the Industrial Disputes Act, 1947, the Labour Court erred in not considering the material evidence on record which included documents which were part of the earlier domestic enquiry, but were marked by witnesses afresh before the Tribunal. Learned counsel would refer to clause 3(a) of the CDA rules of the petitioner company whereunder an employee has been defined to include a workman as defined under the Industrial Employment (Standing Orders) Act, 1946. Learned counsel would submit that the Tribunal erred in placing reliance o n **Neeta Kaplish Vs. Presiding Officer, Labour Court and another** and would submit that in the said Judgment the employer had failed to adduce any evidence and had contended that the evidence adduced in the domestic enquiry

should be taken into consideration. Learned counsel would submit that it was in such circumstances that the Supreme Court had held that the record pertaining to the domestic enquiry did not constitute fresh evidence as the domestic enquiry proceedings had already been found to be defective by the Labour Court. Learned counsel would seek to distinguish the judgment in Neeta Kaplish (four supra) and submit that since in the present case the employer had produced, the documents relied upon in the domestic enquiry, afresh before the Tribunal and marked these documents as exhibits, the Tribunal was bound to examine the said documents and render its findings thereupon, despite the fact that these documents formed part of the earlier domestic enquiry.

7. Sri A.Sivaramaiah, the second respondent party in person, would submit that his contention before the Tribunal was that M/s Indian Immunologicals Limited was part of the National Dairy Development Board and did not have a separate legal entity. He would submit that since M/s Indian Immunologicals Limited was only a unit of NDDB, irrespective of the fact that he was directed to work in the Indian Immunologicals unit, he remained an employee of the National Dairy Development Board. He would submit that since M/s Indian Immonologicals Limited, at the relevant time, was a unit of the National Dairy Development Board, the reference order and the relief granted by the Tribunal, except to the extent of denying him 75% back wages, is valid.

8. Party in person would submit that having held the charges against him was not proved, the Tribunal was not justified in denying him the remaining 75% back wages. He would submit that while this Court in W.P.No.15829 of 1990

and 7425 of 1991 dated 10.02.1992 had held that he was an employee of M/s Indian Immunologicals Limited and not that of National Dairy Development Board, which order was confirmed by the Division Bench in W.A.No.248 and 249 of 1992 dated 15.06.1993, subsequently in the review petition filed by him in Review W.A.M.P.No.2569 and 2070 of 1993 in W.A.No.248 and 249 of 1992 the Division Bench, by order dated 28.10.1994 had held that if he approached the authority under A.P. Shops and Establishments Act or raises an Industrial Disputes, the authority under the A.P. Shops and Establishments Act or the Tribunal, as the case may be, shall dispose of the matter on merits in accordance with law, without taking into consideration any observation made by the Division Bench in Writ Appeal No.248 and 249 of 1992 dated 15.06.1993 or by the learned single Judge in W.P.Nos.15829 of 1990 and 7425 of 1991 dated 10.02.1992. The party in person would submit that, in view of the order passed in Review W.A.M.P.No.2569 or 2570 of 1993 dated 28.10.1994, the Tribunal had erred in placing reliance on the earlier judgment in W.A.No.248 and 249 of 1992 and in holding that the petitioner was an employee of M/s Indian Immunologicals Limited and not that of the National Dairy Development Board. The party in person would submit that the Tribunal had erred in not taking into consideration the relevant material including the order of the Division Bench in Review W.A.M.P.No.2569 and 2570 of 1993 and had failed to apply its mind independently to the question as to whether M/s Indian Imunologicals Limited was, at the relevant point of time, part and parcel of M/s National Dairy Development Board and as to whether he (party in person) was thereby an

employee of M/s National Dairy Development Board. In this context reference may be made to the Award of the Tribunal dated 20.03.2001 wherein it was held thus:

> *"14. It is seen from Division bench Judgment Ex.M56 that the workman has raised the very same contentions that he raised earlier as to the fact that he was appointed a Junior Assistant by the NDDB and by then Indian Immunological was neither the company nor a society brought into existence of NDDB which had become a statutory corporation in the year 1987 by Act 37/87.*

15. *The said contention was rejected by the Division Bench in view of the fact that as per the terms and conditions of appointment order Ex.W1 dated 28.6.1982 which clearly reveals that his appointment was made for the proposed organization i.e. "Foot and Mouth decease vaccine Plant" at Hyderabad. Soon after the appointment "Indian Immunological" was brought in to existence as a subsidiary of the Indian Diary Corporation which took over the management of " Foot and Mouth decease Vaccine Plant" Further one of the condition was that his services shall be transferred to the proposed organistion. Though Indian Immunological became a subsidiary of the NDDB and the Foot and Mouth decease Vaccine plant came under the control and management of Indian Immunological as a separate unit, still the contentions raised by the workman were rejected holding that Section 47 of the Act is of no help to him.*

16. *When such a conclusion was arrived at holding that the service regulations of NDDB are not applicable to the workman, he is precluded and barred from agitating it again and not permitted under doctrine of rejusdicata. The Principle of resjudicata is applicable not merely to the provisions of C.P.C. but to all litigations. So it is not necessary to go into details about the various*

contentions raised by the workman on this point."

9. It is therefore, clear that the Tribunal had merely relied upon the Judgment of the Division Bench, (Ex.M.56) in W.A.No.248 and 249 of 1992 dated 15.06.1993, in holding that the service regulations of NDDB were not applicable to the second respondent and that he was precluded and barred from agitating this question again on the doctrine of resjudicata. The order of the Division Bench, in Review W.A.M.P.No.2569 and 2570 of 1993 dated 28.10.1994, wherein it was held that the Tribunal was required to decide the matter on merits without being influenced by any observations made in W.A.No.248 and 249 of 1992 dated 15.06.1993, does not seem to have been bought to the notice of the Tribunal. Consequent to the order of the Division Bench, in Review W.A.M.P.No.2569 and 2570 of 1993 the Tribunal was independently requried to consider the question as to whether the petitioner was an employee of the National Dairy Development Board and as to whether the rules and regulations applicable to the National Dairy Development Board would apply to the second respondent-workman also.

10. Sri P.Nageshwara Sree, learned counsel for the petitioner, would submit that by Act 37 of 1987 M/s Indian Immunologicals Limited has been held to be a subsidiary of M/s National Dairy Development Board and that subsequently in October, 1999 M/s Indian Immunologicals Limited has been formed, as a separate company, under the companies Act.

11. Sri A.Sivaramaiah, party in person on the other hand would contend that, by

virtue of Regulation 49(9) of the National Dairy Development Board, Conduct, Discipline and Appeal Rules,1988, applicable to officers would apply to workmen also. He would refer to the schedule of the applicable CDA rules, wherein Junior Assistants in the scale of pay 260-450 and those in the scale of pay of 330-560 are also included, to submit that the CDA rules would also apply to Junior Assistant and Junior Assistant Grade I, more so as the CDA Rules themselves specify that their applicability would be unless the context otherwise requires. Party in person would refer to **N.K.Jain and others V C.K.Shah and others** wherein it has been held:

> *It is a settled rule of interpretation that in arriving at the true meaning of any particular phrase in a statute, the phrase is not to be viewed isolated from its context. It must be viewed in its whole context, the title, the preamble and all the other enacting parts of the statute. It follows therefrom that all statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them, such as "unless the context otherwise requires", or " unless a contrary intention appears" or "if" not inconsistent with the context or subject matter.*

12. In this regard the party in person would submit that in view of the expression "unless the context otherwise requires", the CDA rules would apply to Junior Assistants and Junior Assistant Grade I, to which category he belonged to prior to his termination.

13 The services of the second respondent were terminated on 31.05.1991 much prior to October, 1999 when M/s Indian Immunologicals Limited was formed as a separate company under the Companies Act. The position which existed, on the date of termination of the services of the second respondent, in May, 1991 is required to be taken as the relevant date to determine as to whether or not

the second respondent was an employee of M/s National Dairy Development Board and whether or not M/s Indian Immunologicals Limited was part and parcel of M/s National Dairy Development Board. These questions, not having been considered by the Tribunal, constitute errors of law requiring interference by this Court in exercise of its certiorari jurisdiction requiring the award of the tribunal to be set aside and the matter remanded to the Tribunal.

14. Sri A. Sivaramaiah, party in person, would submit that he has been out of employment from 1991 and is being paid wages last drawn as on 1991 during the pendency of the present writ petition. He would submit that, on the award now being set aside, he would not even be paid this meagre amount during the pendency of proceedings before the Tribunal and this would result in his being driven to the verge of starvation. He would further submit that if the matter was further delayed before the Tribunal it would be difficult for him to survive. I find considerable force in this submission of Sri A.Sivaramaiah, party in person. The dispute in I.D.No.63 of 1997 is pursuant to a reference made by the Government more than eight years ago. The services of the second respondent were terminated in May, 1991 more than 14 years ago. As such the dispute in I.D.No.63 of 1997 would require expeditious disposal.

15. The Tribunal is hereby, directed to decide the question as to whether the second respondent workman was an employee of the National Dairy Development Board and as to whether M/s Indian Immunologicals Limited was, in May, 1991 when the services of the Second respondent were terminated,

part and parcel of the National Dairy Development Board. After deciding this question, the Tribunal shall examine the matter under Section 11 A of the Industrial Disputes Act, 1947, and pass an Award accordingly. Determination of these questions, and the subsequent enquiry under Section 11-A of the Act, shall only be on the basis of the evidence on record and none of the parties to the dispute shall be permitted to adduce evidence afresh. The Tribunal shall hear the parties and pass an award, as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order.

16. While it is true that on the award in I.D.No.63 of 1997 dated 20.03.2001, now being set aside, the second respondent-workman would not be entitled to the benefit of wages last drawn under Section 17B of the Industrial Disputes Act, in the peculiar facts and circumstances of the present case and inasmuch as the second respondent has been out of employment from 1991 and the Tribunal had earlier directed reinstatement and the workman was being paid wages under Section 17-B of the Act, during the pendency of the present writ petition before this Court, for the past four years, I consider it appropriate that the second respondent be continued to be paid wages, last drawn by him, under Section 17 B of the Industrial Disputes Act, 1947, till the matter is heard and decided and an award passed afresh by the Industrial Tribunal.

17. The Award, in I.D.No.63 of 1997 dated 20.03.2001, is set aside and the matter is remanded to the Tribunal for its consideration, in accordance with the observations aforementioned, within a period of four months from the date of receipt of a copy of this order. It is needless to mention that since the order of

the Tribunal holding that the domestic enquiry is vitiated has attained finality on its being confirmed in W.P.No.27138 of 1999 dated 22.12.2000 the question relating to the validity of the domestic enquiry will not be reopened and the Tribunal is only required to given its finding on the questions aforementioned and thereafter examine the matter under Section 11-A of the Industrial Disputes Act, 1947, on the basis of the evidence already on record.

18. Both the writ petitions are disposed of. There shall however be no order as to costs.

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04-10-2005

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